

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION

MASSACHUSETTS

September 17, 2013

Administrator Gina McCarthy
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Opposition to RDA Petitions

Dear Administrator McCarthy:

NAIOP Massachusetts, The Commercial Real Estate Development Association, would like to express its strong opposition to the petitions requiring EPA to exercise its "Residual Designation Authority" (RDA) under Section 402 of the Clean Water Act. These petitions were filed by several public interest groups on July 10, 2013 and seek regulation of any non de minimis point source stormwater discharges from commercial, industrial and institutional sites that are not currently subject to Clean Water Act permitting requirements. If accepted by US EPA, the requirements would affect properties in Regions 1 (New England), 3 (Mid-Atlantic) and 9 (Pacific Southwest).

NAIOP Massachusetts represents the interests of more than 1,400 members involved with the development, ownership, management, and financing of more than 175 million square feet of office, industrial, mixed use, retail and institutional space in the Commonwealth.

NAIOP Massachusetts appreciates the importance of improving water quality in our nation's rivers, streams and lakes, and has been actively involved in stormwater regulatory issues here in Massachusetts. NAIOP participated as a stakeholder with respect to stormwater regulations previously proposed by the Massachusetts Department of Environmental Protection. Ultimately, the Department chose not to proceed with that regulatory effort due to concerns over costs and regulatory burdens. Subsequently, US EPA Region 1 received a RDA petition for the Upper Charles River watershed, and in 2008 US EPA Region 1 issued a "preliminary residual designation" and launched a pilot general permit program in the Massachusetts communities of Franklin, Bellingham and Milford.

NAIOP participated in an advisory committee during the stakeholder process for that pilot program. In that role, NAIOP provided extensive comments on the EPA's Draft Permit for Residually Designated Discharges in the affected towns and we made recommendations at the

start of EPA's work on the *Sustainable Stormwater Funding Evaluation* for the Upper Charles River Communities.

US EPA Region 1 retained Horsley Witten Group to study the costs associated with implementing the proposed general permit program. The resulting report¹ concluded that the estimated capital costs to implement the general permit program in those three municipalities alone would exceed \$180 million. In addition, estimated annual operating costs for the three municipalities ranged from \$880,000 to \$1.7 million. The study also evaluated two developed sites in Bellingham and Milford to determine costs to comply with the proposed general permit, and determined that: (i) the cost per pound of phosphorous removed ranged from \$68,683/pound to \$113,152/pound and (ii) the cost per impervious acre treated ranged from \$101,760/acre and \$149,750/acre. In the face of these staggering costs, the proposed pilot general permit program for those three communities has been deferred, and we understand that no further action is being taken at this time on the RDA petition that was filed.

Based on the capital and operating costs identified in the Horsley Witten study, the costs of imposing a similar program in three US EPA regions would be hundreds of billions of dollars, or more. The direct and indirect costs of such a program will add an additional financial burden that some property owners would not be able to carry. The economic consequences of this regulatory program to private property owners, combined with the fiscal impact this program would have on state and local governments, would be overwhelming.

As noted above, NAIOP recognizes the importance of addressing stormwater impacts to water quality. We believe that, in order to be both reasonable and effective, any regulatory effort to mitigate water quality impacts from stormwater discharges must take into account the following considerations:

1. Focus on all sources of water quality impacts, with a fair allocation of costs.
2. Avoid the use of traditional permitting schemes that would impose unwarranted regulatory costs and burdens on property owners, while shifting agency focus from improving water quality to compliance and enforcement.
3. Adopt realistic timeframes for implementing water quality improvements, taking into account the fact that current stormwater impacts are the result of over 100 years of urban and suburban development.
4. Allow for site-specific approaches, including allowing property owners to select from a menu of applicable stormwater management options.
5. Focus on source reduction, not treatment, as the priority.

¹ Draft Report, Sustainable Stormwater Funding Evaluation for the Upper Charles River Communities of Bellingham, Franklin, Milford, MA dated August 2011. This report is available on US EPA Region 1's website or we would be happy to forward a copy to you.

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6. Allow improvements to stormwater management to be implemented during site development and redevelopment, and avoid mandating costly treatment system retrofits.

We understand that US EPA is in the process of preparing stormwater regulations for developed and redeveloped properties. Little information has been publicly released about those proposed regulations. It makes no sense to proceed with the RDA petitions before US EPA has finalized those regulations. In addition, we hope that US EPA will consider the points noted above as it prepares its stormwater regulations, and that NAIOP and other interested parties are afforded the opportunity to participate in a meaningful stakeholder process as that regulatory effort proceeds.

For these reasons, we urge US EPA to deny the RDA petitions. Please contact us if additional information is needed.

Sincerely,
NAIOP Massachusetts,
The Commercial Real Estate Development Association



David Begelfer
CEO

cc: Curt Spalding
US EPA Region 1 Administrator

